



2021 Nursing Home Minimum Staffing Statute Wage Pass-through Policy & Procedures

Rate Pass-Through Requirement

Effective October 1, 2021, eighty percent (80%) of any rate increase pursuant to subsection (a)(2)(vi) of this section shall be dedicated to increase compensation for all eligible direct-care workers in the following manner.

Definition of Compensation

Compensation increases shall include base salary or hourly wage increases, benefits, other compensation, and associated payroll tax increases for eligible direct-care workers.

Definition of Direct Care Staff

Direct-care staff shall include registered nurses (RNs), licensed practical nurses (LPNs), certified nursing assistants (CNAs), certified medication technicians, licensed physical therapists, licensed occupational therapists, licensed speech-language pathologists, mental health workers who are also certified nurse assistants, physical therapist assistants, housekeeping staff, laundry staff, dietary staff or other similar employees providing direct-care services; provided, however that this definition of direct-care staff shall not include exempt employees under the FLSA or employees who are contracted or subcontracted through a third-party vendor or staffing agency.

Non-Compliance

Any facility that does not comply with the terms of this certification shall be subjected to a clawback and a twenty-five percent (25%) penalty of the unspent or impermissibly spent funds, paid by the nursing facility to the State, in the amount of the increased reimbursement subject to this provision that was not expended in compliance with the facility's certification. The EOHHS review of these pass-through records will commence in January 2023. In conducting this records review EOHHS will take into account and consider any delay in the distribution of funds.

Implementation

By December 31, 2022, nursing facilities shall electronically submit to EOHHS a certification that they have complied with the following requirements of the new legislation. The certification and accompanying Excel workbook is posted on the EOHHS website under the "Minimum Staffing Compliance Information"

In completing this certification Providers must include information as to how each individual eligible employee's compensation increased, information regarding hourly wages prior to the increase and after the compensation increase, hours paid after the compensation increase and associated increased payroll taxes. For employees represented by a union, a collective bargaining agreement can be used in lieu of this certification form. All data reported on the compliance form is subject to review and an audit by EOHHS. The EOHHS audits may include field or desk audits, and facilities may be required to provide additional supporting documents, which would include, but are not limited to, payroll records.